

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA  
DAVENPORT DIVISION

FILED  
DAVENPORT, IOWA  
01 JUL 11 PM 12:07  
CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA

COLLEEN BIRDNOW BROWN  
Plaintiff

CIVIL NO.: 3-01-80030

v

ORDER GIVING  
NOTICE OF DISMISSAL

EMMIS COMMUNICATIONS, INC.  
and LEE ENTERPRISES, INC.,  
Defendants

Notice is given that the above-entitled action will be dismissed under Local Rule 41.1(1)(D), fourteen (14) days from the date this Order is filed for failure to file the Scheduling Order and Discovery Plan required by Local Rule 16.1(a)(b). A copy of Local Rule 41.1 is forwarded with this Order.

Dated this 11<sup>TH</sup> day of JULY, 2001.



James R. Rosenbaum, Clerk  
U. S. District Court

CIVIL RULES

Rule 41.1

DISMISSAL OF ACTIONS

a) VOLUNTARY DISMISSALS: Special attention is directed to voluntary dismissals, wherein an action may be dismissed without order of Court, pursuant to FRCP 41:

1) by the plaintiff, by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or

2) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

b) INVOLUNTARY DISMISSALS:

1) Civil actions shall be dismissed by the Clerk without prejudice:

A) Where service has not been made on any defendant within one hundred and twenty days (120) after the filing of the complaint, and plaintiff has failed to file a statement in writing within one hundred and twenty-seven (127) days after the filing of the complaint setting forth good cause why service has not been made.

B) As to a particular defendant where service has been made upon that defendant and neither answer nor request for other action has been filed as to that defendant within thirty (30) days after the date answer was due.

C) Where a default has been entered and motion for entry of judgment by default has not been made in accordance with FRCP 55 within thirty (30) days after the entry of default. An action will not be dismissed under this rule if plaintiff states that further court action is necessary before default judgment can be sought.

D) Where a deadline set for the performance of any act required by the Federal Rules of Civil Procedure, these Rules or Order of any Federal Court has been exceeded by more than thirty (30) days and an extension of time has been neither requested nor granted.

2) At least ten (10) days prior to the expiration of any of the times specified above, the Clerk shall mail to all counsel of record a copy of this rule and a notice that the action will be dismissed unless within the time allowed herein the action required is taken or good cause for not dismissing the action is shown.

- c) **Dismissal of Settled Cases.** Upon written notice to the court that an action has been settled, counsel shall file within thirty (30) days thereafter, such papers as are required to terminate the action; upon failure to do so, the court may order dismissal of the action without further notice and without prejudice to the right of either party to secure reinstatement of the case within sixty (60) days after the date of said order by making a showing of good cause as to why settlement was not a fact consummated.
- d) **Requests for Dismissals.** Any motion for dismissal filed by plaintiff or by the parties jointly will be deemed to request dismissal with prejudice unless the application states otherwise.

## **IMPORTANT NOTICE**

**THIS IS A NEW VERSION OF THE SCHEDULING ORDER AND DISCOVERY PLAN, AND THE ACCOMPANYING WORKSHEET. IT IS TO BE USED IN ALL CASES FILED ON OR AFTER DECEMBER 1, 2000, EXCEPT FOR THOSE CASES WHERE NO SCHEDULING ORDER AND DISCOVERY PLAN IS REQUIRED UNDER AMENDED AND REVISED LR 16.1(d).**

The Federal Rules of Civil Procedure have been amended effective December 1, 2000, and the new requirements in these rules are reflected in the new scheduling order and discovery plan. For all cases filed on or after December 1, 2000, you **MUST** use the new form attached to this notice.

Please discard all earlier versions of the form, including any you may have on your word processing system. You may download this new version of the form from the courts' websites at:

[www.iand.uscourts.gov](http://www.iand.uscourts.gov)

or

[www.iasd.uscourts.gov](http://www.iasd.uscourts.gov)

**For cases filed on or after December 1, 2000, only the new form will be accepted; SUBMISSIONS ON EARLIER VERSIONS OF THE FORM WILL BE REJECTED BY THE CLERK OF COURT.**

**U.S. DISTRICT COURTS FOR THE NORTHERN/SOUTHERN DISTRICTS OF IOWA**

**INSTRUCTIONS AND WORKSHEET FOR PREPARATION OF  
SCHEDULING ORDER AND DISCOVERY PLAN**

**Effective December 1, 2000**

**ORDER REQUIRING SUBMISSION OF SCHEDULING ORDER  
AND DISCOVERY PLAN**

Please carefully review the Local Rules, amended and revised as of January 31, 2001, for a more complete description of the District's requirements for pretrial case management.

**IT IS ORDERED THAT** counsel for the parties shall confer, as required by Federal Rules of Civil Procedure 16 and 26 and Local Rules 16.1 and 26.1, and submit to the Clerk of Court on the attached form a stipulated proposed scheduling order and discovery plan. If counsel are not able to agree upon the deadlines required to complete the form or are requesting deadlines significantly beyond those suggested in the form, or if the case involves any special issues that require the early attention of the court, counsel should, in paragraph 11 of the form, request a Rule 16(b) and 26(f) scheduling and planning conference with the court.

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U.S. MAGISTRATE JUDGE

**Follow this worksheet at your Rule 16(b) and 26(f) conference. The deadlines referred to in the worksheet are suggested deadlines except for the dispositive motion deadline, which MUST be at least 120 days before the trial ready date. File only the attached two-page proposed scheduling order and discovery plan. DO NOT FILE THE WORKSHEET.**

- 1 **INITIAL DISCLOSURES:** State whether the parties entered into an agreement at the Rule 26(f) conference resolving all issues relating to the Federal Rule of Civil Procedure 26(a)(1) initial disclosures in this action.

\_\_\_\_\_ yes      \_\_\_\_\_ no

If you answered "no" to the last question, state whether any party objected at the Rule 26(f) conference either to making the initial disclosures or to the timing of the initial disclosures.

\_\_\_\_\_ yes \_\_\_\_\_ no

If any party objected at the Rule 26(f) conference either to making the initial disclosures or to the timing of the initial disclosures, then **within 10 days after the scheduling order and discovery plan is filed**, the objecting party must serve and file a document in which the objections are set forth with particularity.

If the parties have entered into an agreement concerning the timing of the initial disclosures, state the date by which the initial disclosures will be made.

\_\_\_\_\_  
(insert date)

Unless a different deadline is set by agreement of the parties or court order, or unless a party objects to making the initial disclosures or to the timing of the initial disclosures, Local Rule 26.1(a) requires that the initial disclosures be made **within 14 days after the Rule 26(f) conference**.

Federal Rule of Civil Procedure 26(a)(1) requires that the parties must, without awaiting a discovery request, provide to other parties:

- (A) the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information;
- (B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment;
- (C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Federal Rule of Civil Procedure 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and
- (D) for inspection and copying as under Federal Rule of Civil Procedure 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

If the parties have any other disputes concerning initial disclosures or are aware of any other issues relating to scheduling or planning that might benefit from the early intervention of the court, the parties may, in paragraph 11 of the proposed scheduling order and discovery plan, request a court-sponsored pretrial discovery and planning conference.

2. **ADDING PARTIES:** State the deadline for filing motions to add parties.

\_\_\_\_\_  
(insert date)

This deadline should be **no more than 2 months after the date the proposed scheduling order and discovery plan is submitted to the court.**

3. **AMENDING PLEADINGS:** State the deadline for filing motions to amend pleadings.

\_\_\_\_\_  
(insert date)

This deadline should be **no more than 2 months after the date the proposed scheduling order and discovery plan is submitted to the court.**

4. **EXPERT WITNESSES:** State the deadlines for the parties to disclose, in accordance with Federal Rule of Civil Procedure 26(a)(2)(A) and (B), all "expert witnesses" who may be used at trial to present evidence under Federal Rules of Evidence 702, 703, or 705.

Plaintiff's experts:

\_\_\_\_\_  
(insert date)

Defendant's experts:

\_\_\_\_\_  
(insert date)

Plaintiff's rebuttal experts:

\_\_\_\_\_  
(insert date)

The deadlines for the plaintiff to disclose experts, for the defendant to disclose experts, and for the plaintiff to disclose rebuttal experts should be **no more than 3 months, 5 months, and 6 months**, respectively, after the date the proposed scheduling order and discovery plan is submitted to the Clerk of Court. Except as otherwise stipulated by the parties or ordered by the court, the parties must, by these deadlines, disclose to the other parties: (a) the identity of each expert witness; and (b) a written report prepared and signed by each expert witness, as required by Federal Rule of Civil Procedure 26(a)(2)(B). The report must contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

5. **DISCOVERY**: State the date by which all discovery will be **completed**, not propounded.

\_\_\_\_\_  
(insert date)

This deadline should be **no more than 8 months after the date the proposed scheduling order and discovery plan is submitted to the court.**

Federal Rule of Civil Procedure 26(e) imposes a continuing duty to supplement discovery responses as soon as practicable. **All discovery responses must be supplemented at least 30 days before the close of discovery.**

6. **DISPOSITIVE MOTIONS**: State the deadline for filing dispositive motions.

\_\_\_\_\_  
(insert date)

This deadline **must be at least 120 days before the trial ready date**, but should be **no more than 9 months after the date the proposed scheduling order and discovery plan is submitted to the court.**

7. **TRIAL READY DATE**: State the date on which the parties anticipate the case will be ready for trial.

\_\_\_\_\_  
(insert date)

This deadline should be **no more than 13 months after the date the proposed scheduling order and discovery plan is submitted to the court**, but **must not be less than 120 days after the dispositive motion deadline.**

8. **JURY DEMAND**: State whether a jury demand has been filed.

\_\_\_\_\_ yes \_\_\_\_\_ no

9. **ESTIMATED LENGTH OF TRIAL**: State your estimate of the number of days required for trial. For jury trials, include in your estimate the time required for jury selection, opening statements, closing arguments and instructions. If circumstances change, the parties should immediately so notify the court. **In any event, the parties should notify the court of any change in the time required for trial and of their new estimated length of trial by at least 30 days before the trial readiness date in paragraph 7.**

\_\_\_\_\_  
(insert number of trial days)



10. **SETTLEMENT CONFERENCE:** Indicate one of the following two choices regarding a court-sponsored settlement conference:

\_\_\_\_\_ A court-sponsored settlement conference should be set by the court at this time for a date after: \_\_\_\_\_  
(insert date)

\_\_\_\_\_ A court-sponsored settlement conference is not necessary at this time.

11. **SCHEDULING AND PLANNING CONFERENCE:** State whether the parties believe a court-sponsored scheduling and planning conference pursuant to Federal Rules of Civil Procedure 16(b) and 26(f) would be appropriate in this case.

\_\_\_\_\_ yes \_\_\_\_\_ no

12. **CONSENT TO MAGISTRATE JUDGE:** State whether the parties unanimously consent, or do not unanimously consent, to trial, disposition, and judgment by a United States Magistrate Judge, with appeal to the Eighth Circuit Court of Appeals.

\_\_\_\_\_ yes, we unanimously consent \_\_\_\_\_ no, we do not unanimously consent

You may consent in either a jury or non-jury case. Cases consented to the United States Magistrate Judge will be set for trial on a **date certain**.

13. **DELIVERY OF FORM TO CLERK OF COURT:** Print or type the names, addresses, telephone and fax numbers, and e-mail addresses on the proposed scheduling order and discovery plan, sign the proposed order and plan, and deliver it to the Clerk of Court. **Be sure to deliver to the Clerk of Court both pages of the proposed order and plan.**

IN THE UNITED STATES DISTRICT COURT  
FOR THE [NORTHERN] [SOUTHERN] DISTRICT OF IOWA  
[WESTERN] [CENTRAL] [EASTERN] [CEDAR RAPIDS] [DAVENPORT] DIVISION

_____	)	
	)	
Plaintiff(s),	)	NO. _____
	)	
vs.	)	
	)	
_____	)	
	)	
Defendant(s).	)	<b>SCHEDULING ORDER AND DISCOVERY PLAN</b>

Counsel have conferred and submit the following case information and proposed dates for case management:

1. Did the parties enter into an agreement at the Rule 26(f) conference resolving all issues relating to initial disclosures? \_\_\_\_ yes \_\_\_\_ no If you answer "no," state whether any party objected at the Rule 26(f) conference to making or to the timing of the initial disclosures: \_\_\_\_ yes \_\_\_\_ no  
***If any party objected at the Rule 26(f) conference to making or to the timing of the initial disclosures, then the objecting party must, within 10 days after this order and plan has been filed, serve and file a document in which the objections are set forth with particularity.*** If the parties have agreed to a deadline for making the initial disclosures, state the date by which the initial disclosures will be made: \_\_\_\_\_
2. Deadline for motions to add parties: \_\_\_\_\_
3. Deadline for motions to amend pleadings: \_\_\_\_\_
4. Expert witnesses disclosed by: a) Plaintiff: \_\_\_\_\_  
b) Defendant: \_\_\_\_\_  
c) Plaintiff Rebuttal: \_\_\_\_\_
5. Deadline for **completion** of discovery: \_\_\_\_\_
6. Dispositive motions deadline (**at least 120 days before Trial Ready Date**): \_\_\_\_\_
7. Trial Ready Date (**at least 120 days after Dispositive Motions Date**): \_\_\_\_\_
8. Has a jury demand been filed? \_\_\_\_ yes \_\_\_\_ no
9. Estimated length of trial: \_\_\_\_ days
10. Settlement conference (choose one of the following): (a) \_\_\_\_ A court-sponsored settlement conference should be set by the court at this time for a date after: \_\_\_\_\_; or  
(b) \_\_\_\_ A court-sponsored settlement conference is not necessary at this time.
11. Should the court order a court-sponsored scheduling and planning conference pursuant to Fed. R. Civ. P. 16(b) and 26(f)? \_\_\_\_ yes \_\_\_\_ no
12. Do the parties unanimously consent to trial, disposition and judgment by a U.S. Magistrate Judge, with appeal to the Eighth Circuit Court of Appeals pursuant to 28 U.S.C. § 636(c)(3)?  
\_\_\_\_ yes \_\_\_\_ no

\_\_\_\_\_  
Attorney for Plaintiff(s):

Address:

Telephone:

Facsimile:

E-mail address:

\_\_\_\_\_  
Attorney for Defendant(s):

Address:

Telephone:

Facsimile:

E-mail address:

\_\_\_\_\_  
Attorney for Third-Party Defendant/Other:

Address:

Telephone:

Facsimile:

E-mail address:

**JUDGE'S REVISIONS**

The deadline in Paragraph \_\_\_\_\_ is changed to \_\_\_\_\_.

The deadline in Paragraph \_\_\_\_\_ is changed to \_\_\_\_\_.

The deadline in Paragraph \_\_\_\_\_ is changed to \_\_\_\_\_.

**IT IS ORDERED** that this proposed Scheduling Order and Discovery Plan  
\_\_\_\_\_ **is** \_\_\_\_\_ **is not** approved and adopted by this court.

**IT IS FURTHER ORDERED** that a scheduling and planning conference:

\_\_\_\_\_ will not be scheduled at this time.

\_\_\_\_\_ will be held in the chambers of Judge \_\_\_\_\_ at the  
U.S. Courthouse in \_\_\_\_\_, Iowa, on the \_\_\_\_\_ day  
of \_\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_\_\_.m.

\_\_\_\_\_ will be held by telephone conference, initiated by the court, on the  
\_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_\_\_.m.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT

**ORDER OF REFERENCE**

**IT IS HEREBY ORDERED** that this case is referred to a U.S. Magistrate Judge for the conduct of all further proceedings and the entry of judgment in accordance with 28 U.S.C. § 636(c) and the consent of the parties.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE